

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TRACY TOCKSTEIN,

Plaintiff,

vs.

STEVEN SPOENEMAN, et al.,

Defendants.

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Case No. 4:07CV00020 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Defendants' First Motion to Continue [doc. #72], Plaintiff's Motion for Leave to File Amendment by Interlineation to Plaintiff's Affirmative Defenses to Defendant's Counterclaim [doc. #74] and Plaintiff's and Third-Party Defendant's Joint Request for Determination of the Issue of Re-Opening of Discovery [doc. #76]. A hearing was held on March 13, 2009, and the Court heard arguments from the Parties on these Motions.

I. ADDITIONAL DISCOVERY

This action is currently set on a three week docket beginning April 6, 2009 at 8:30 a.m. For clarification purposes, the Court notes that this docket setting means that the case could be called by the Court to begin at any time during the three-week period beginning on that date, and it does not mean that three weeks have been set aside for this particular case. At the hearing, counsel for Defendants commented that the trial should not last the full three weeks, however, the Court reminds the Parties that the Joint Scheduling Plan filed in this matter states that the case shall last "no longer than three (3) days." The Court will notify counsel in advance of the three-week docket of the exact date and time within that docket that this case shall be heard.

The three week docket setting is quickly approaching, and in their Motion, Defendants ask for the trial date to be continued so that they may conduct additional discovery. Defendants state that between February 26, 2009 and March 3, 2009 they received 2,348 pages of newly-disclosed documents from Plaintiff. Defendants state that they have been prejudiced and are unable to adequately prepare for trial. Defendants ask that the Court either bar Plaintiff from presenting evidence of his alleged damages or continue the case to permit further discovery and trial preparation. Plaintiff has explained to the Court the reason for the late production of these documents. District courts have broad discretion in imposing sanctions and may refuse to allow the party to support or oppose certain claims or defenses, prohibit the introduction into evidence of designated matters, strike out pleadings, dismiss the action, or even render a default judgment against the party. *Everyday Learning Corp. v. Larson*, 242 F.3d 815 (8th Cir. 2001); Fed. R. Civ. P. 37. However, the Court does not believe that the imposition of sanctions is appropriate in this instance.

While sanctions are not appropriate, the Court agrees that Defendants require additional discovery. As a result, the Court will vacate the current trial setting, and set this matter for a Jury Trial on a three-week docket beginning May 4, 2009, at 8:30 a.m.. Defendants may depose Plaintiff for two hours, and may depose Theresa Tocksein for one hour. The Court has already ruled on summary judgment motions in this case, and will not allow the Parties to file additional motions for summary judgment.

II. AMEND AFFIRMATIVE DEFENSES

Plaintiff seeks to add the affirmative defense of “unconscionability/overreaching in attorney/client relationship.” Additionally, Plaintiff already asserted waiver as a defense [doc. #52], and now seeks to amend this defense to conform it to the evidence. Defendants assert that

they will be prejudiced because they will be unable to conduct meaningful discovery on these defenses. However, as the Court stated above, the Court is granting the Parties additional time for discovery. As a result, Defendants will not be prejudiced by the addition of this defense. When Defendants depose Plaintiff and Theresa Tockstein, they may also inquire into these defenses, and they may also conduct other discovery related to these defenses.


Accordingly,

IT IS HEREBY ORDERED that Defendants' First Motion to Continue [doc. #72] is **GRANTED**. The Final Pretrial Conference will be held on April 24, 2009, at 2:00 p.m. This matter is set for a Jury Trial on a three-week docket beginning May 4, 2009, at 8:30 a.m. The parties shall file Pretrial Compliance no less than twenty (20) days prior to the date set for trial as set forth in this Court's previously issued Case Management Order [doc. #33].

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to File Amendment by Interlineation to Plaintiff's Affirmative Defenses to Defendant's Counterclaim [doc. #74] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's and Third-Party Defendant's Joint Request for Determination of the Issue of Re-Opening of Discovery [doc. #76] is **GRANTED**. Discovery is only re-opened for matters related to the recently disclosed documents and the defenses at issue in doc. #74. Defendants may depose Plaintiff for two hours and Theresa Tockstein for one hour.

Dated this 13th Day of March, 2009.


E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE